III. Claims 10-13, drawn to an isolated polynucleotide comprising an isolated polynucleotide encoding A34 protein, an expression vector, and a host cell;

IV. Claims 14-16, drawn to an isolated polypeptide molecule comprising A34, or an antigenic fragment of A34 and a polypeptide;

V. Claims 17-18, drawn to a method of diagnosing cancer characterized by the presence of A34 antigen in cancer cells;

VI. Claims 19 and 33, drawn to a hybridization assay and a method for determining if cancer cells that express A34 are present in a sample;

VII. Claims 21-23, drawn to a method for determining regression, progression, or onset of a cancerous condition;

VIII. Claim 33, drawn to a method for determining if cancer cells that express A34 are present in a sample; and

IX. Claim 34, drawn to an isolated polynucleotide molecule.

In addition, the Examiner alleged that the application contains claims directed to more than one species of the generic invention and these species lack unity of invention. Therefore, the Examiner required an election of anti-cancer agents (listed in claim 29), chemotherapeutic or cytotoxic agents (listed in claim 31), and CDR3 sequence (one or a combination listed in claim 36) if Group I is elected.

Applicants provisionally elect the claims of Group I for further prosecution. With respect to the election of species requirement, Applicants provisionally elect cytotoxic agents, calicheamicin, and SEQ ID No. 49. This election is made with traverse for the reasons set forth below.

According to MPEP § 808, every requirement to restrict has two aspects: (a) the reasons why each invention as claimed is either independent or distinct from the other; *and* (b) the reasons why there would be a serious burden on the examiner if restriction is not required. Moreover, restriction is not proper per se only because one or more independent and distinct inventions are defined by the claims. The Examiner must explain why examining each of those inventions would impose a serious burden. In this case, the Examiner argued that the restriction is proper

because it would impose a serious burden to examine all of the claims at once because the inventions have allegedly acquired a separate status in the art in view of their different classification and the necessity for non-coextensive non-patent literature searches.

However, Applicants note that all of the claims are linked by a single inventive concept: a substantially pure immunoglobulin molecule that binds specifically to the A34 antigen and uses thereof. Therefore, a search of antibodies to the A34 antigen would necessarily uncover the art related to the uses of those antibodies. While this search might require a review of more than one class and subclass, it would not impose a serious burden on the Examiner and it would certainly save administrative costs associated with pursuing the individual groups of claims in separate divisional filings. Therefore, reconsideration and withdrawal of the restriction requirement are requested in view of the foregoing remarks.

If there are any questions regarding this response or the application in general, a telephone call to the undersigned at (212) 895-4221 would be appreciated since this should expedite the prosecution of the application for all concerned. If necessary please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket # 029065.51088US2).

Respectfully submitted,

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